IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

MFA.No. 910 of 1996()

OPMV.650/1992, MACT, KOLLAM
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APPELLANT - 3RD RESPONDENT :

THE NEW INDIA ASSURANCE CO. LTD., KOLLAM, REPRESENTED BY ITS DEPUTY MANAGER, REGIONAL OFFICE, M.G. ROAD, ERNAKULAM.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS - CLAIMANT - RESPONDENT:
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1. **THULASIDHARAN PILLAI, S/O. GOPALAKRISHNA PILLAI, KOCHU VEEDU, VADAKKEVILA CHERY, KOLLAM.**

2. **SATHEESH SHETTY, S/O. CHELLAPPAN CHETTIAR, C.R. VILASOM, POOTHAKULAM, S. PARAVOOR, KOLLAM.**

3. **OMANAKUTTAN PILLAI, LEKSHMI BHAVANAM, VADAKKEVILA, KOLLAM (DELETED)**

RESPONDENT NO.3 IS DELETED FROM THE ARRAY AT THE RISK OF THE PETITIONER ON I.AL. NO.1069 OF 2007 AS PER ORDER DATED 6.6.2007.

BY ADV. SRI.P.B.SURESH KUMAR(QUILON)
SRI.B.S.SWATHY KUMAR
SRI.V.N.ACHUTHA KURUP

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO.910 OF 1996

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Dated this the 27th day of June, 2007

J U D G M E N T

Third respondent-Insurer in O.P(MV) No.650 of 1992 on the file of the Motor Accidents Claims Tribunal, Kollam is the appellant. Appeal is filed against the award passed by the Tribunal by which it awarded a sum of Rs.35,000/- to the first respondent and directed the Insurer to pay that amount.

2. First respondent-petitioner filed the claim petition contending that he sustained injuries in a motor vehicle accident which took place at 1.30 p.m. on 26.1.1992 in front of the burial ground situated on the side of National Highway. It was averred that the petitioner was travelling in an Autorikshaw bearing Reg.No.5340 from west to east. It was further averred that due to the negligent or rash driving of the Autorikshaw by its driver, it capsized and petitioner sustained injuries.

3. Appellant raised a specific contention that no accident as averred in the petition took place. It was contended that the petitioner was riding a bicycle, it hit on a

rock, he fell down and sustained injuries. So the Insurer disputed its liability to pay the compensation awarded.

4. Tribunal did not raise an issue as to whether the petitioner sustained injuries in a motor vehicle accident. But it entered into a finding that the accident occurred due to the negligence of the driver of the Autorikshaw. No valid reason for arriving at such a conclusion was given by the Tribunal. Exhibit A5 is the wound certificate. In the wound certificate the alleged cause of accident is shown as follows:

Tribunal did not consider whether the place of accident stated in the petition and the wound certificate is one and the same.

5. Learned counsel appearing for the appellant has argued before me that the petitioner was riding a bicycle under the influence of alcohol as can be seen from the wound certificate itself. In the wound certificate presence of smell of alcohol was noted. The Tribunal did not consider whether the

accident as alleged in the petition took place at 1.30 p.m. on 26.1.1002. The Tribunal also did not consider the difference of time of the accident stated in the Original Petition and the time noted in the wound certificate. So the matter requires reconsideration. For that purpose the matter has to go back.

6. In the result, the appeal is allowed. The award impugned in the appeal is set aside. The case is remanded. The Tribunal is directed to take O.P(MV) No.650 of 1992 back to file and dispose of the same afresh in accordance with law after giving both sides an opportunity to adduce further evidence, if so advised. I make it clear that the award in its entirety is set aside. Amount, if any, deposited by the appellant can be withdrawn by it. Parties shall appear before the Tribunal on 30.7.2007.

Civil Miscellaneous Petition No.3483 of 1996 shall stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO.910 OF 1996

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J U D G M E N T

27TH JUNE, 2007